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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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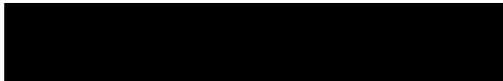
FILE:



Office: Newark

Date:

IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On October 29, 1973, in the Superior Court of New Jersey, Hudson County, Case/Indictment No. 607-72, the applicant entered a plea of guilty to possession of a controlled substance. He was found guilty of the crime, sentenced to the Hudson County

Penitentiary for a period of one year, suspended, and placed on probation for a period of 3 years.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects the following arrests in New Jersey. Some or all of the crimes are found to involve moral turpitude and convictions of such crimes may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. However, the court dispositions of these arrests are not contained in the record of proceeding:

2. Arrested on November 22, 1975 and found guilty on December 2, 1976 of "carrying prohibited."

3. Arrested on December 23, 1975 and found guilty on February 5, 1976 of attempt to commit/obstruct police.

4. Arrested on March 6, 1977 and found guilty on March 6, 1977 of simple assault.

5. Arrested on December 9, 1978 for possession of marijuana.

6. Arrested on October 17, 1979 for (1) bribery and (2) resisting an officer; he was found guilty of bribery and the resisting officer charge was dismissed.

7. Arrested on February 24, 1982 for aggravated assault.

8. Arrested on May 12, 1982 for (1) intimidation and (2) resisting an officer.

9. Arrested on December 19, 1983 for (1) possession of cocaine and (2) possession of marijuana.

10. Arrested on May 12, 1986 for (1) making false report (2) obstruct police and (3) possession of burglary tools.

11. Arrested on September 27, 1986 for (1) burglary (2) larceny and (3) possession of burglary tools.

12. Arrested on February 24, 1987 for (1) burglary (2) larceny from auto.

13. Arrested on February 24, 1987 for (1) assault (2) damage public property (3) receiving stolen property (4) possession of burglary tools.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of a controlled substance (paragraphs 1 above). There is no waiver available to an alien found

inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. While the court's judgment of conviction report does not reflect the type of controlled substance the applicant was charged, the FBI report shows that he was arrested for possession of heroin. The applicant, therefore, does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.